

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
DOCKET NO. 1:16-cv-00300-MOC-DLH

REBA RENEE COX)	
TONY COX,)	
)	
Plaintiffs,)	
)	
Vs.)	ORDER
)	
SOUTHERN HEALTH PARTNERS, INC.)	
CHARLES S. MCDONALD)	
MICHELLE RUSSELL, SHERIFF OF)	
HENDERSON COUNTY,)	
HENDERSON COUNTY SHERIFF'S OFFICE)	
KAREN LACEY STEWART,)	
)	
Defendants.)	

THIS MATTER is before the court on the Motion to Dismiss (#7) filed by defendants “Sheriff of Henderson County,” “Henderson County Sheriff’s Office,” and Charles McDonald (hereinafter, at times, “the county defendants.”). Despite being represented by counsel, plaintiffs have not responded to the motion within the time allowed.

The court has, however, reviewed the substance of the brief supporting the motion and concurs with the county defendants that plaintiffs’ have failed, as a matter of well settled law, to properly name a county defendant capable of being sued.

First, the “Henderson County Sheriff’s Office” is not an entity capable of being sued under North Carolina law. Parker v. Bladen County, 583 F.Supp.2d 736, 740 (E.D.N.C. 2008). The defendant Henderson County Sheriff’s Office is dismissed.

Second, the “Sheriff of Henderson County” is a title, not a person, and only persons in being may be sued under North Carolina law. Coleman v. Cooper, 89 N.C.App. 188, 192 (1988). As a lawsuit cannot be maintained against a title, the suit against “Sheriff of Henderson County” is dismissed.

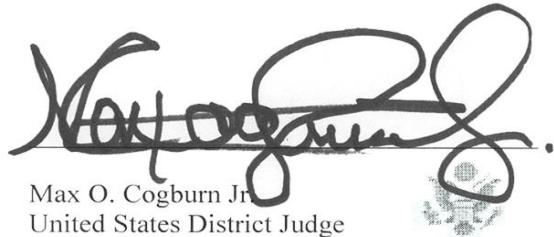
As to Charles McDonald, who is presently the Sheriff of Henderson County, North Carolina, plaintiffs name Sheriff McDonald in the body of their Complaint, but have not included Sheriff McDonald in the caption of their pleading as required under Rule 10(a), Federal Rules of Civil Procedure. See Londeree v. Crutchfield Corp., 68 F.Supp.2d 718 (W.D.Va. 1999). As failure to include “Charles McDonald” in the caption of the Complaint makes the allegations against him in the body of the complaint a nullity, National Commodity and barter Assoc. v. Gibbs, 886 F.2d 1240, 1245 (10th Cir. 1989), the claims against this defendant will be dismissed without prejudice. Plaintiffs will be granted leave to file an amended complaint within 14 days of this Order properly naming “Charles McDonald” in the caption of their amended complaint. Plaintiffs are advised that such naming would typically be “Charles McDonald, in his official capacity as Sheriff of Henderson County, North Carolina.” Plaintiffs are further advised that as the Complaint is now written, there are no allegations that would justify bringing an individual capacity claim against this defendant. See Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985).

ORDER

IT IS, THEREFORE, ORDERED that the county defendants’ Motion to Dismiss (#7) is GRANTED, and defendants “Sheriff of Henderson County” and “Henderson County Sheriff’s Office” are dismissed. Defendant Charles McDonald, named only in the body of the Complaint,

is also dismissed, but such dismissal is without prejudice. Plaintiffs are granted leave to file an Amended Complaint within 14 days as instructed herein, and amendments in conformity with such instructions shall relate back to the original date of filing.

Signed: October 7, 2016

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.". The signature is fluid and cursive, with a small circular emblem or stamp partially visible behind the end of the signature.

Max O. Cogburn Jr.
United States District Judge